

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

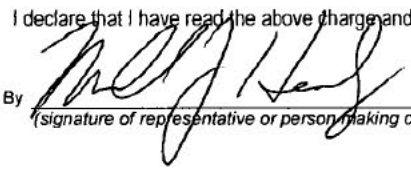
FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE

Case	Date Filed
04-CA-171737	3/14/16

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA, as a joint or single employer	b. Tel. No. 610-645-9222(Hirsch)
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 1. 3100 West Allegheny Avenue, Philadelphia, PA. 19132 2. One McDonald's Plaza Oak Brook, Illinois 60523	e. Employer Representative 1. Joseph Hirsch (counsel) 2. Gloria Santana
	g. e-Mail
	h. Number of workers employed Specific Store: Approx 40
i. Type of Establishment (factory, mine, wholesaler, etc.) Restaurant	j. Identify principal product or service Fast Food
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about (b) (6), (b) (7)(C) 2016, Respondent(s) discharged employee (b) (6), (b) (7)(C) from its location at 3100 West Allegheny Avenue, Philadelphia, PA.19132 Respondent engaged in the conduct described above because the employee named therein joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of mutual aid and protection, and in order to discourage employees from engaging in such activities for the purpose of collective bargaining or other mutual aid and protection.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Pennsylvania Workers Organizing Committee(A Project of the Fast Food Workers Committee)	
4a. Address (Street and number, city, state, and ZIP code) c/o (b) (6), (b) (7)(C) 1706 Race Street Third Floor Philadelphia, PA.19103	4b. Tel. No. (b) (6), (b) (7)(C) 4c. Cell No. (b) (6), (b) (7)(C) 4d. Fax No. 4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) See Number 3.	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Michael J. Healey (signature of representative or person making charge) (Print/type name and title or office, if any)	
Tel. No. 412-391-1428 Office, if any, Cell No. 412-760-0342 Fax No. 412-281-9509 e-Mail mike@unionlawyers.net	
Address 247 Fort Pitt Blvd. 4th Floor, PGH. PA. 15222	3/10/16 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



Healey and Hornack, P.C.
ATTORNEYS AT LAW

Michael J. Healey
Joseph S. Hornack
Jules Lobel, OF COUNSEL

247 Fort Pitt Boulevard
4th Floor
Pittsburgh, PA 15222

PHONE: 412.391.7711
TOLL FREE: 888.391.6944
FAX: 412.281.9509

Direct Dial: 412-391-1428
mike@unionlawyers.net

March 10, 2016

Dennis Walsh
Regional Director,
NLRB Region 4
615 Chestnut Street
Philadelphia, PA. 19106-4404

RE: Jo-Dan Enterprises d/b/a McDonald's et al

Dear Mr. Walsh:

Enclosed please find for your consideration and processing an original and 4 copies of unfair labor practice charges in the above captioned matter. The charges relate to an aspect in Philadelphia of what has been referred to as "fast food workers strikes/organizing" The charges are self-explanatory and are detailed in the narrative section of the charge. This is related to the charges at Case No.04-CA-166030 being investigated by Deena Kobell of your office.

There are a number of witnesses who have facts relevant to the allegations who can be produced for interviews. Please have your staff contact me at your earliest convenience and I can begin making arrangements to set up interviews. Copies of this charge have been served on the respondent(s) at the addresses noted on the charge.

I would anticipate wishing to file a brief position statement shortly after the interviews in this matter are complete. Please have a member of your staff contact me at their earliest convenience.

Very truly yours,

Michael Healey
Attorney for Charging Party

Enclosures: Multiple

cc: (b) (6), (b) (7)(C)

Gloria Santona

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658



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March 15, 2016

Jo-DAn MadAlisse LTD, LLC d/b/a McDonald's
3100 West Allegheny Avenue
Philadelphia, PA 19132-1115

Gloria Santona
McDonald's USA
One McDonald's Plaza
Oak Brook, IL 70523

Re: Jo-DAn MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a joint
or single employer
Case 04-CA-171737

Dear Ms. Santona:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney NOELLE M. REESE whose telephone number is (215)597-0729. If this Board agent is not available, you may contact Supervisory Attorney EMILY DESA whose telephone number is (215)597-7626.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your

representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate.** Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

March 15, 2016

We can provide assistance for persons with limited English proficiency or disability.
Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Dennis P. Walsh". The signature is fluid and cursive, with the first name "Dennis" and last name "Walsh" clearly legible.

DENNIS P. WALSH
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cc: Joseph A. Hirsch, Esquire
Hirsch & Hirsch
One Belmont Avenue
8th Floor, Suite 8001
Bala Cynwyd, PA 19004

Doreen S. Davis, Esquire
Jones Day
222 East 41st Street
New York, NY 10017-6702

Veronica Couzo, Esquire
Jones Day
222 East 41st Street
New York, NY 10017-2940

Michael S. Ferrell, Esquire
Jones Day
77 West Wacker Drive
Suite 3500
Chicago, IL 60601-1701

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

04-CA-171737

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**JO-DAN MADALISSE LTD, LLC D/B/A
MCDONALD'S AND MCDONALD'S USA, AS A
JOINT OR SINGLE EMPLOYER**

Charged Party

and

**PENNSYLVANIA WORKERS ORGANIZING
COMMITTEE (PROJECT OF THE FAST FOOD
WORKERS COMMITTEE)**

Charging Party

Case 04-CA-171737

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 15, 2016, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Joseph A. Hirsch, Esquire
Hirsch & Hirsch
One Belmont Avenue
8th Floor, Suite 8001
Bala Cynwyd, PA 19004

Jo-DAn MadAlisse LTD, LLC d/b/a
McDonald's
3100 W Allegheny Ave
Philadelphia, PA 19132-1115

Gloria Santona
McDonald's USA
One McDonald's Plaza
Oak Brook, IL 70523

Doreen S. Davis, Esquire
Jones Day
222 E 41st St
New York, NY 10017-6702

Veronica Couzo, Esquire
Jones Day
Jones Day
222 East 41st Street
New York, NY 10017-2940

Michael S. Ferrell, Esquire
Jones Day
77 West Wacker Drive
Suite 3500
Chicago, IL 60601-1701

March 15, 2016

Date

Janet T. Jackson
Designated Agent of NLRB

Name

/s/ Janet T. Jackson

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658



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March 15, 2016

(b) (6), (b) (7)(C)

Pennsylvania Workers Organizing Committee
(Project of the Fast Food Workers Committee)
1706 Race Street, 3rd Floor
Philadelphia, PA 19103-1200

Re: Jo-DAn MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a joint
or single employer
Case 04-CA-171737

Dear (b) (6), (b) (7)(C):

The charge that you filed in this case on March 14, 2016 has been docketed as case number 04-CA-171737. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney NOELLE M. REESE whose telephone number is (215)597-0729. If this Board agent is not available, you may contact Supervisory Attorney EMILY DESA whose telephone number is (215)597-7626.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

March 15, 2016

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Dennis P. Walsh". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

DENNIS P. WALSH
Regional Director

cc: Michael J. Healey, Esquire
Healey & Hornack, P.C.
247 Fort Pitt Boulevard, 4th Floor
Pittsburgh, PA 15222



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658

Agent's Direct Dial: (215)597-0729

March 15, 2016

Michael J. Healey, Esquire
Healey & Hornack, P.C.
247 Fort Pitt Boulevard, 4th Floor
Pittsburgh, PA 15222

Re: Jo-DAn MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a
joint or single employer
Case 04-CA-171737

Dear Mr. Healey:

You have asked the Region to consider whether injunctive relief is appropriate under Section 10(j) of the National Labor Relations Act. This letter is to advise you of how a 10(j) investigation differs from a typical unfair labor practice investigation and what you can do to assist in that investigation.

Section 10(j) of the Act allows the Board to seek immediate injunctive relief in U.S. District Court. This extraordinary relief is available only in situations where the Board's normal procedures will not provide effective relief because, by the time the Board issues an order, the damage caused by the illegal acts cannot be undone. You should be aware that the investigation of a 10(j) case differs from other unfair labor practice investigations in two important respects.

First, in addition to obtaining evidence to show that an unfair labor practice has occurred, the Board agent, during the initial investigation, must also obtain evidence showing that, without an injunction, the alleged unlawful acts could have a permanent effect so that any Board remedy would have no real effect. The Board agent may question you and other witnesses about the impact of the alleged violations on statutory rights, including facts that will show any "chill" on the right of you or other employees to engage in concerted or union activities. This evidence of impact varies from case to case depending on the nature of the unlawful conduct. Examples include: a drop in the number of union authorization cards obtained after the unfair labor practices began; a decrease in attendance at union organizing meetings; the number of employees affected by changes to important working conditions; and statements made by employees that would show, because of the unfair labor practices, they fear losing their jobs, are angry at the union, believe the union is ineffective, believe organizing is futile, etc.

Second, the investigation of cases involving potential 10(j) relief has priority over most other cases in the Region. This is because delay may entirely preclude injunctive relief where the situation has changed so much that an injunction cannot undo the harm caused by the unfair labor

Jo-DAn MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a joint
or single employer
Case 04-CA-171737

- 2 -

March 15, 2016

practices. Thus, you should be prepared to present all of your evidence, including impact evidence, as quickly as possible.

If you have any questions, please contact the Board agent assigned to investigate your client's charge. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Dennis P. Walsh". The signature is written in a cursive style with a large, stylized "D" and "W".

DENNIS P. WALSH
Regional Director

From: [Garber, Patricia A.](#)
To: [Reese, Noelle M.](#)
Subject: RE: Pot 10j: Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's USA, as a joint or single employer (CAT 3) 10(j)
Date: Tuesday, March 15, 2016 3:49:00 PM

No, it's just a regular category 3.

Sent from [Outlook Mobile](#). Yes, it works with gmail.

On Tue, Mar 15, 2016 at 12:32 PM -0700, "Reese, Noelle M." <Noelle.Reese@nlrb.gov> wrote:

Patti,

(b) (5)



Noelle

From: Maier, Harold A.
Sent: Tuesday, March 15, 2016 3:27 PM
To: Garber, Patricia A. <Patricia.Garber@nlrb.gov>; Williams, Ladean <Ladean.Williams@nlrb.gov>; Reese, Noelle M. <Noelle.Reese@nlrb.gov>; Messina, Rita M. <Rita.Messina@nlrb.gov>
Cc: DeSa, Emily <Emily.DeSa@nlrb.gov>
Subject: Pot 10j: Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's USA, as a joint or single employer (CAT 3) 10(j)

Pot 10j protected concerted activity discharge case

From: Jackson, Janet T.
Sent: Tuesday, March 15, 2016 3:16 PM
To: Maier, Harold A. <Harold.Maier@nlrb.gov>; DeSa, Emily <Emily.DeSa@nlrb.gov>; Reese, Noelle M. <Noelle.Reese@nlrb.gov>; Murray, Lorraine Y. <Lorraine.Murray@nlrb.gov>; Messina, Rita M. <Rita.Messina@nlrb.gov>; Kraus, Patricia <Patricia.Kraus@nlrb.gov>; Peterson, Jane D. <Jane.Peterson@nlrb.gov>
Subject: Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's USA, as a joint or single employer (CAT 3) 10(j)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

Agent's Direct Dial: (215)597-0729

March 31, 2016

Joseph A. Hirsch, Esquire
Hirsch & Hirsch
One Belmont Avenue
8th Floor, Suite 8001
Bala Cynwyd, PA 19004

Doreen S. Davis, Esquire
Jones Day
222 E 41st St
New York, NY 10017-6702

Veronica Couzo, Esq.
Jones Day
77 W. Wacker Drive Suite 3500
Chicago, IL 60601

Michael S. Ferrell, Esquire
Jones Day
77 West Wacker Drive
Suite 3500
Chicago, IL 60601-1701

Re: Jo-Dan MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a
joint or single employer
Case 04-CA-171737

Dear Mr. Hirsch, Ms. Davis, Ms. Couzo, and Mr. Ferrell:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-referenced matter. Set forth below are the allegations and issues on which your evidence is needed, a request to take affidavits, a request for documentary evidence, and the date for providing your evidence.

Allegations: The allegations for which I am seeking your evidence are as follows. The Employer violated Section 8(a)(1) and (3) of the Act by discharging (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) Union support and activities and because (b) (6), (b) (7)(C) engaged in protected, concerted activities.

Board Affidavits: I am requesting to take affidavits from (b) (6), (b) (7)(C) and any other individuals you believe have information relevant to the investigation of this matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me by **Thursday, April 7, 2016** to schedule these affidavits.

Documents and Information: Please provide the following documents and information, along with any and all other evidence you deem to be relevant to the case:

1. The personnel file regarding (b) (6), (b) (7)(C), including all prior discipline.
2. All the reasons for terminating (b) (6), (b) (7)(C) and all supporting documentary evidence.
3. Please provide all the work policies, rules, employee handbooks, contracts, or other documents describing expected employee conduct and disciplinary procedures that relate to (b) (6), (b) (7)(C) termination.
4. Are employees permitted to make personal phone calls? Please provide all work policies, rules, employee handbooks, contracts, or other documents describing the use of cell phones and making personal calls.
5. Other employees who were similarly discharged or disciplined for similar reasons. Please provide all documentary supporting evidence.
6. Other employees who were discharged or disciplined for personal phone use. Please provide all documentary supporting evidence.

Position on 10(j) Relief: You are also requested to provide your position as to the appropriateness of Section 10(j) injunctive relief in this matter. As you may know, Section 10(j) of the Act permits the NLRB to ask a federal district court “for appropriate temporary relief or restraining order” pending the Board’s resolution of an unfair labor practice charge. The district court is authorized to grant “such temporary relief or restraining order as it deems just and proper.” *If* the Region determines the Charged Party has violated the Act as alleged, the Region will consider whether to seek injunctive relief in this matter. Accordingly, please provide your position, legal theory, case law, and supporting evidence regarding whether injunctive relief would be appropriate for the alleged violations in this case and whether such injunctive relief would be just and proper. I wish to emphasize that the Region has not yet made a decision as to

whether the Charged Party has violated the Act as alleged. Rather, we want to provide you with adequate notice that injunctive relief will be considered if such a decision is made.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by **Monday, April 11, 2016**. If you are willing to allow me to take affidavits, please contact me by **Thursday, April 7, 2016** to schedule a time to take affidavits. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to **www.nlr.gov**, select **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (215)597-0729, or e-mail, Noelle.Reese@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

/s

NOELLE M. REESE
Senior Field Attorney

From: [Joseph A. Hirsch - Office](#)
To: [Reese, Noelle M.](#)
Subject: Re: Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA, as a joint or single employer, Case 04-CA-171737
Date: Tuesday, April 12, 2016 8:51:38 AM

Thank you.

No, I do not expect to present witnesses at this time.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
1 Belmont Avenue
8th Floor, Suite 8001
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Apr 11, 2016, at 3:25 PM, Reese, Noelle M. <Noelle.Reese@nlrb.gov> wrote:

Your request for an extension of time until 4/18 to present your evidence in this matter is granted. Will you be presenting witnesses?

Noelle M. Reese

Noelle M. Reese
Senior Field Attorney
National Labor Relations Board, Region 4
615 Chestnut Street
Philadelphia, PA 19106
215-597-0729
fax 215-597-7658
Noelle.Reese@nlrb.gov

From: Joseph A. Hirsch - Office [<mailto:jahirsch@hirschfirm.com>]
Sent: Monday, April 11, 2016 3:07 PM
To: Reese, Noelle M. <Noelle.Reese@nlrb.gov>
Subject: Re: Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA, as a joint or single employer, Case 04-CA-171737

Ms. Reese,

I will need a little more time to respond to this request. I have been tied up in trial in NY and my client happened to be out of town much of last week. I expect to

be able to have a response to you by 4/18. Your courtesy would be appreciated.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
1 Belmont Avenue
8th Floor, Suite 8001
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Mar 31, 2016, at 2:33 PM, Reese, Noelle M.
<Noelle.Reese@nlrb.gov> wrote:

Please see the attached letter requesting your evidence in the recently
filed charge.

Thank you,

Noelle M. Reese

Noelle M. Reese
Senior Field Attorney
National Labor Relations Board, Region 4
615 Chestnut Street
Philadelphia, PA 19106
215-597-0729
fax 215-597-7658
Noelle.Reese@nlrb.gov

<Jo-Dan MadAlisse Request Evidence Ltr.pdf>

From: [Dunham, Geoffrey](#)
To: [Maier, Harold A.](#)
Cc: [Reese, Noelle M.](#); [Kobell, Deena E.](#); [Wainstein, Richard](#); [Kelly, David A.](#); [Roberts, Tracey](#)
Subject: FW: Coordinated Cases: Agenda Minute in Jo-Dan MadAlisse LTD, LLC d/b/a McDonalds, 4-CA-166030 and 4-CA-171737
Date: Friday, April 29, 2016 12:18:16 PM

(b) (5), (b) (6), (b) (7)(C)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Geoff

From: Maier, Harold A.
Sent: Friday, April 29, 2016 9:39 AM
To: Dunham, Geoffrey <geoffrey.dunham@nlrb.gov>
Cc: Reese, Noelle M. <Noelle.Reese@nlrb.gov>; Kobell, Deena E. <Deena.Kobell@nlrb.gov>
Subject: Coordinated Cases: Agenda Minute in Jo-Dan MadAlisse LTD, LLC d/b/a McDonalds, 4-CA-166030 and 4-CA-171737

Hi, Geoff.

We are forwarding these cases for coordination which involve a facility already bound up in the ongoing trial.

See below for links to agenda minute and the charges. Please let me know if you have any questions.

Thanks!

Harry

From: Reese, Noelle M.
Sent: Friday, April 29, 2016 7:35 AM
To: Maier, Harold A. <Harold.Maier@nlrb.gov>
Subject: FIR/ Agenda Minute in Jo-Dan MadAlisse LTD, LLC d/b/a McDonalds, 4-CA-166030 and 4-CA-171737

Harry,

Here is the [Agenda Minute](#).

[Charge in 4-CA-166030](#)

[Charge in 4-CA-171737](#)

I'm off today, but if you have any questions or wish to discuss these cases further, please call my work cell at 202-257-2294.

Thank you,

Noelle M. Reese
Senior Field Attorney
National Labor Relations Board, Region 4
615 Chestnut Street
Philadelphia, PA 19106
215-597-0729
fax 215-597-7658
Noelle.Reese@nrlrb.gov



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

May 5, 2016

Michael J. Healey, Esquire
Healey & Hornack, P.C.
247 Fort Pitt Boulevard, 4th Floor
Pittsburgh, PA 15222

Re: Jo-Dan MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA
as a joint or single employer
Case 04-CA-171737

Dear Mr. Healey:

We have carefully investigated and considered your charge that Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA LLC have violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge because there is insufficient evidence to establish a violation of the Act.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **May 19, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than May 18, 2016. **If an appeal is postmarked or given to a delivery**

service on the due date, it will be rejected as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before May 19, 2016.** The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after May 19, 2016, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Richard P. Heller

RICHARD P. HELLER
Acting Regional Director¹

Enclosure

cc: Joseph A. Hirsch, Esquire
Hirsch & Hirsch
One Belmont Avenue
8th Floor, Suite 8001
Bala Cynwyd, PA 19004

¹ Regional Director Dennis P. Walsh is recused from this matter.

Jo-Dan MadAlisse LTD, LLC
d/b/a McDonald's USA, LLC
3100 W. Allegheny Avenue
Philadelphia, PA 19132-1115

Ms. Gloria Santona
Meg-Nik, Inc. d/b/a McDonald's
and McDonald's USA, LLC
One McDonald's Plaza
Oak Brook, IL 70523

Doreen S. Davis, Esquire
Jones Day
222 E. 41st Street
New York, NY 10017-6702

Michael S. Ferrell, Esquie
Jones Day
77 West Wacker Drive
Suite 3500
Chicago, IL 60601-1701

(b) (6), (b) (7)(C)

Pennsylvania Workers Organizing Committee
1706 Race Street, 3rd Floor
Philadelphia, PA 19103-1200

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA LLC

Case Name(s).

04-CA-171737

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

NXGEN Action Slip

Case Name: Jo-Dan MadAlisse LTD, LLC d/b/a McDonalds,	Case Number: 4-CA-171737
Agent: Reese	Supervisor: DeSa CATEGORY: 3

(1) Check the appropriate action

Withdrawal Approval – Forward with recommendation
 ___ Advice Issuance Action - Forward with draft
 ___ Deferral Issuance - Forward with draft letter
X Dismissal Issuance - Forward with draft letter
 ___ Settlement Approval - Forward with draft settlement
 ___ Complaint - Forward draft complaint

2) Check if partial

(3) Mark all allegation types that apply, as follows:

W=withdraw not adjusted; X=adjusted
 C =allegation type in Complaint
 ✓ = allegation type deferred
 D =dismissed not adjusted; A=adjusted
 S =allegation type settled

List RELATED Cases if any:

INFORMATION TO CHARGING PARTY ON REASONS FOR PROPOSED DISMISSAL:

Before the charge is dismissed, have you:

- (1) Told the CP why the charge would be dismissed, absent withdrawal? X Yes ___ No
 (2) Give the CP an opportunity to withdraw? X Yes ___ No
 (3) Absent withdrawal, did you solicit a short-form dismissal letter? X Yes ___ No
 (4) Did the CP agree to: (a) ___ Withdraw the charge? **OR** (b) X Accept a short-form dismissal letter?

IF YOU DID NOT SOLICIT A WITHDRAWAL REQUEST OR SHORT-FORM DISMISSAL LETTER, PLEASE EXPLAIN BELOW WHY YOU DID NOT DO SO:

REASON:

IF PARTIAL DISPOSITION, INDICATE:

Sections withdrawn or dismissed: 8a1

Sections remaining: 8a1

<p>8(a)(1)</p> <p><input type="checkbox"/> Coercive Actions (Surveillance, etc.)</p> <p><input type="checkbox"/> Coercive Rules</p> <p><input type="checkbox"/> Coercive Statements (Threats, Promises of Benefits, etc.)</p> <p><input type="checkbox"/> Concerted Activities (Reliation, Discharge, Discipline)</p> <p><input type="checkbox"/> Denial of Access</p> <p><input type="checkbox"/> Discharge of Supervisor (<i>Parker-Robb</i>)</p> <p><input type="checkbox"/> Interrogation (Including polling)</p> <p><input type="checkbox"/> Lawsuits</p> <p><input type="checkbox"/> Weingarten</p> <p>8(a)(2):</p> <p><input type="checkbox"/> Assistance</p> <p><input type="checkbox"/> Domination</p> <p><input type="checkbox"/> Unlawful Recognition</p> <p>8(a)(3):</p> <p><input type="checkbox"/> Changes in Terms & Conditions of Employment</p> <p><input checked="" type="checkbox"/> Discharge (Including Layoff & Refusal to Hire (Not Salting))</p> <p><input type="checkbox"/> Discipline</p> <p><input type="checkbox"/> Lockout</p> <p><input type="checkbox"/> Refusal to Consider/Hire Applicant (Salting only)</p> <p><input type="checkbox"/> Refusal to Hire Majority</p> <p><input type="checkbox"/> Refusal to Reinstate Ee/Striker (e.g. Laidlaw)</p> <p><input type="checkbox"/> Retaliatory Lawsuit</p> <p><input type="checkbox"/> Shutdown or Relocate/Subcontract Unit Work</p> <p><input type="checkbox"/> Union Security Related Actions</p> <p>8(a)(4):</p> <p><input type="checkbox"/> Changes in Terms & Conditions of Employment</p> <p><input type="checkbox"/> Discharge (including Layoff and Refusal to Hire)</p> <p><input type="checkbox"/> Discipline</p> <p><input type="checkbox"/> Refusal to Reinstate Ee Striker</p> <p><input type="checkbox"/> Shutdown or Relocate/Subcontract6 Unit Work</p> <p>8(a)(5)</p> <p><input type="checkbox"/> Alter Ego</p> <p><input type="checkbox"/> Failure to Sign Agreement</p> <p><input type="checkbox"/> Refusal to Bargain/Bad Faith Bargaining (including surface bargaining/direct</p>	<p><input type="checkbox"/> dealing)</p> <p><input type="checkbox"/> Refusal to Furnish Information</p> <p><input type="checkbox"/> Refusal to Recognize</p> <p><input type="checkbox"/> Repudiation/Modification of Contract- (Sec 8(d)/Unilateral Changes)</p> <p><input type="checkbox"/> Shutdown or Relocate (e.g. <i>First National Maint.</i>) Subcontract Work</p> <p>8(b)(1)(A):</p> <p><input type="checkbox"/> Coercion including Statements & Violence</p> <p><input type="checkbox"/> Denial of Access</p> <p><input type="checkbox"/> Discipline (including charges/fines)</p> <p><input type="checkbox"/> Harassment</p> <p><input type="checkbox"/> Duty of Fair Representation, including Superseniority, denial of access</p> <p><input type="checkbox"/> Hiring Hall</p> <p><input type="checkbox"/> Picketing/Strike Actions</p> <p><input type="checkbox"/> Rules: Coercive</p> <p><input type="checkbox"/> Union Dues and/or Membership related (including accessing fees).</p> <p>8(b)(1)(B):</p> <p><input type="checkbox"/> Funds Contribution Related</p> <p><input type="checkbox"/> Lawsuits</p> <p><input type="checkbox"/> Other Allegations</p> <p><input type="checkbox"/> Statements/Threats/Violence</p> <p>8(b)(2):</p> <p><input type="checkbox"/> Hiring Hall Related</p> <p><input type="checkbox"/> Lawsuits</p> <p><input type="checkbox"/> Union Security Related</p> <p>8(b)(3):</p> <p><input type="checkbox"/> Refusal to Bargaining/Bad Faith Bargaining or Surface Bargaining</p> <p><input type="checkbox"/> Refusal to Furnish Information</p> <p><input type="checkbox"/> Failure to Sign Agreement</p> <p>8(b)(4)(A):</p> <p><input type="checkbox"/> Lawsuits/Grievances</p> <p><input type="checkbox"/> /Handbilling</p> <p><input type="checkbox"/> Statements</p> <p>8(b)(4)(B):</p> <p><input type="checkbox"/> Law Suits/Grievances</p> <p><input type="checkbox"/> Picketing/Handbilling</p>	<p><input type="checkbox"/> Statements</p> <p>8(b)(4)(C):</p> <p><input type="checkbox"/> Law Suits/Grievances</p> <p><input type="checkbox"/> Picketing</p> <p><input type="checkbox"/> Statements</p> <p>8(b)(4)(D):</p> <p><input type="checkbox"/> All Allegations</p> <p>8(b)(5):</p> <p><input type="checkbox"/> All Allegations</p> <p>8(b)(6):</p> <p><input type="checkbox"/> All Allegations</p> <p>8(b)(7)(A):</p> <p><input type="checkbox"/> Other Allegations</p> <p>8(b)(7)(B):</p> <p><input type="checkbox"/> Other Allegations</p> <p>8(b)(7)(C):</p> <p><input type="checkbox"/> Other Allegations</p> <p>8(e):</p> <p><input type="checkbox"/> All Allegations against a Labor Organization</p> <p><input type="checkbox"/> All Allegations against an Employer</p> <p>8(g):</p> <p><input type="checkbox"/> All Allegations</p> <p>REMEDIES SOUGHT</p> <p>AFFIRMATIVE ACTIONS</p> <p>BACKPAY AND EE REINSTATMENT</p> <p>FEEES, DUES, FINES REFUNDED</p> <p>RESTORATION OF RIGHTS</p> <p>REMEDY SOUGHT/ENHANCED</p> <p>REMEDY</p> <p>ENHANCED REMEDIES</p> <p>SPECIFY ENHANCED REMEDIES HERE:</p>
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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

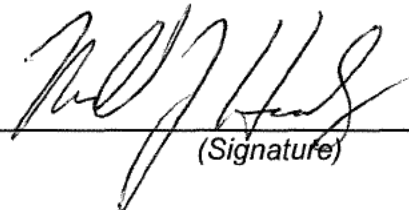
Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA LLC

Case Name(s).

04-CA-171737

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*


(Signature)

Confirmation Number	1000072612
Date Submitted	5/18/2016 11:04:52 AM (GMT-05:00) Eastern Time (US & Canada)
Case Name	Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA, as a joint or single employer
Case Number	04-CA-171737
Filing Party	Charging Party
Name	Healey, Michael
Email	mike@unionlawyers.net
Address	247 Fort Pitt Blvd. Fourth Floor Pittsburgh, PA 15222
Telephone	(412) 391-7711
Fax	(412) 281-9509
Original Due Date	5/19/2016
Date Requested	6/2/2016
Reason for Extension of Time	Appeal Filed. This is simply a request for an extension of time of 2 weeks to file a position statement
What Document is Due	Appeal
Parties Served	



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

May 18, 2016

MICHAEL J. HEALEY, ESQ.
HEALEY & HORNACK, P.C.
247 FORT PITT BLVD 4TH FL
PITTSBURGH, PA 15222

Re: Jo-Dan MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a
joint or single employer
Case 04-CA-171737

Dear Mr. Healey:

We have received your appeal . We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

We are granting you until June 2, 2016, to submit any additional material in support of your appeal.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

By:

Deborah M.P. Yaffe, Director
Office of Appeals

Jo-Dan MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a joint
or single employer
Case 04-CA-171737

-2

cc: DENNIS P. WALSH
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
615 CHESTNUT ST STE 710
PHILADELPHIA, PA 19106-4413

JOSEPH A. HIRSCH, ESQ.
HIRSCH & HIRSCH
ONE BELMONT AVE
8TH FL STE 8001
BALA CYNWYD, PA 19004

JO-DAN MADALISSE LTD,
LLC D/B/A MCDONALD'S
3100 W ALLEGHENY AVE
PHILADELPHIA, PA 19132-1115

VERONICA K. COUZO, ESQ.
JONES DAY
77 W WACKER DR STE 3500
CHICAGO, IL 60601

(b) (6), (b) (7)(C)
PENNSYLVANIA WORKERS
ORGANIZING COMMITTEE
(PROJECT OF THE FAST FOOD
WORKERS COMMITTEE)
1706 RACE ST 3RD FL
PHILADELPHIA, PA 19103-1200

GLORIA SANTONA
MEG-NIK, INC. D/B/A MCDONALD'S,
AND MCDONALD'S USA, LLC,
JOINT EMPLOYERS
ONE MCDONALD'S PLAZA
OAK BROOK, IL 70523

MICHAEL S. FERRELL
JONES DAY
77 W WACKER DR STE 3500
CHICAGO, IL 60601-1701

DOREEN S. DAVIS, ESQ.
JONES DAY
222 E 41ST ST
NEW YORK, NY 10017-6702

cl



Healey and Hornack, P.C.
ATTORNEYS AT LAW

Michael J. Healey
Joseph S. Hornack
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247 Fort Pitt Boulevard
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TOLL FREE: 888.391.6944
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June 2, 2016

Direct Dial: 412-391-1428
E Mail: mike@unionlawyers.net

Via Electronic Filing

Deborah M.P. Yaffe, Director
Office of Appeals
National Labor Relations Board
Office of the General Counsel
Washington, D.C. 20570

**Re: Jo-Dan MadAlisse, LTD,LLC d/b/a McDonald's
USA and McDonald's USA, LLC as Joint or Single
Employer Case No. 04-CA-171737 (Position Statement
In Support of Appeal)**

Dear Ms. Yaffe:

INTRODUCTION

The Pennsylvania Workers Organizing Committee ("Union" or "Charging Party") submits this position statement to support the appeal from the Regional Director's dismissal of the charge filed by the union in this case. For the record, the original charge(s) were filed and affidavit(s) taken in Case No.04-CA-16630.¹ On May 5, 2016 the Regional Director issued a decision to dismiss the charge in this matter. On May 18, 2016 a timely appeal was filed as well as a request for additional time to submit additional material in support of the appeal. Your office granted us until June 2, 2016 to submit any additional material in support of this appeal.

¹ Those charges involved other allegations including allegations involving two other employees. The charges involving the other employees were withdrawn. The charge in this case was filed and focuses on the events leading up to and the discharge of (b) (6), (b) (7)(C).

STATEMENT OF FACTS

Jo-Dan MadAlisse LTD (Jo Dan") is a franchisee for McDonalds at a number of locations in the Philadelphia area. (b) (6), (b) (7)(C) was first hired in (b) (6), (b) (7)(C) by this employer at (b) (6), (b) (7)(C) and began working at the McDonald's location at West Allegheny Avenue in (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) started work as a (b) (6), but then was moved to the (b) (6), (b) (7)(C).

This Employer has engaged since on or about March 2014 in an active and concerted pattern of illegal activity in relation to and in retaliation for employee participation in union organizing drives connected with the "Fight for 15" campaign.. For example see the complaint filed in Case Nos..04-CA-12556, .04-CA-129783, and 04-CA- 133621³ in which the Board alleges 8(a)(1 and 8(a)(3)) violations for:

1. Written policies and postings concerning no loitering to discourage employees from engaging in Union activities;
2. Stating to employees they could not talk about the Union in the restaurant;
3. Soliciting complaints and grievances and offering promotions if employees ceased supporting the union;
4. Stating it would be futile to seek union representation;
5. Illegal interrogation;
6. Creating the impression of surveillance;
7. Making illegal threats;
8. Disparate treatment concerning in restaurant solicitation;
9. Discharging an employee in retaliation for involvement in union activities.

That case is still pending and likely does not proceed until later this year or early next year.

² The reference to (b) (6), (b) (7)(C), (b) (7)(D) refers to where facts appear in the first affidavit provided to the NLRB and dated (b) (6), (b) (7)(C), (b) (7)(D) 2015. That affidavit was provided at (b) (6), (b) (7)(C), (b) (7)(D). The reference (b) (6), (b) (7)(C), (b) (7)(D), refers to the second affidavit of (b) (6), (b) (7)(C), (b) (7)(D) taken on (b) (6), (b) (7)(C), (b) (7)(D), 2016 at (b) (6), (b) (7)(C), (b) (7)(D)

³ This has been consolidated with cases from Region 2 and elsewhere in the ongoing hearings before Administrative Law Judge Lauren Esposito.

Union Activity at McDonald's and (b) (6), (b) (7)(C) Union Involvement

In (b) (6), (b) (7)(C) of 2015, (b) (6), (b) (7)(C) became active in the Fight for 15 campaign, speaking to coworkers every chance (b) (6), (b) (7)(C) got, distributing union cards, and today, (b) (6), (b) (7)(C) is among the campaign's most active worker leaders, participating in several strikes since then.. (b) (6), (b) (7)(C) spoke with workers at (b) (6), (b) (7)(C) store, and with workers at other stores and talked to workers, as they entered and exited the stores, to get them involved in the Fight for 15 Campaign, and to get them involved in strikes and other activities.

While engaging in these activities (b) (6), (b) (7)(C) has been open and visible to managers of the various restaurants. (b) (6), (b) (7)(C) has been involved in at least two strikes (April 15, 2015 and November 10, 2015) and strike notices with (b) (6), (b) (7)(C) name and others on it, being given to store management. (b) (6), (b) (7)(C)

The History of Retaliation

(b) (6), (b) (7)(C) visibility has been such that in (b) (6), (b) (7)(C) 2015 CNN interviewed (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C) house, and a segment appeared nationally on CNN Money and an article was published on CNN.com. (b) (6), (b) (7)(C) and a (b) (6), (b) (7)(C) saw it and commented on it to (b) (6), (b) (7)(C). Shortly after the interview appeared (b) (6), (b) (7)(C) was switched from working as a (b) (6), (b) (7)(C) to working in (b) (6), (b) (7)(C). The reason given to (b) (6), (b) (7)(C) was that (b) (6), (b) (7)(C) did not smile enough". (b) (6), (b) (7)(C)

Shortly before the (b) (6), (b) (7)(C), 2015 strike (b) (6), (b) (7)(C) called off work the required three hours prior to the shift to (b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) was given a stack of write ups including a warning for calling out and write ups for coming in late for incidents which had allegedly happened several weeks prior. When asked why (b) (6), (b) (7)(C) was just getting these write ups (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) could provide them previously because the printer had been out of ink. (b) (6), (b) (7)(C) signed the papers but the company, despite (b) (6), (b) (7)(C) request, did not give (b) (6), (b) (7)(C) copies of those. (b) (6), (b) (7)(C) was suspended for (b) (6), (b) (7)(C)

On (b) (6), (b) (7)(C) 2016 (b) (6), (b) (7)(C) accidentally left (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) Reid saw this and told (b) (6), (b) (7)(C) could not work. (b) (6), (b) (7)(C) said another employee was allowed to pull (b) (6), (b) (7)(C) back, (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) could do that and work, and was told that would be fine. (b) (6), (b) (7)(C) arrived at work the next day, (b) (6), (b) (7)(C) but with (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) had done with approval on (b) (6), (b) (7)(C) 2016. The (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) was not allowed to work (b) (6), (b) (7)(C)

At the same time (b) (6), (b) (7)(C) saw a (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) who brought a (b) (6), (b) (7)(C) to the store for (b) (6), (b) (7)(C). Store management still would not let (b) (6), (b) (7)(C) work that day. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) had a meeting with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2016 in which (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) was suspended for (b) (6), (b) (7)(C), and could return to work on (b) (6), (b) (7)(C), that (b) (6), (b) (7)(C) "thought (b) (6), (b) (7)(C) ran the store and that had to stop". (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) did not think that but did think (b) (6), (b) (7)(C) was being targeted because (b) (6), (b) (7)(C) was a leader of the Fight for 15 campaign.

On (b) (6), (b) (7)(C) 2015 (b) (6), (b) (7)(C) was working and was assigned to making sandwiches. (b) (6), (b) (7)(C) cell phone was constantly ringing but (b) (6), (b) (7)(C) waited until all (b) (6), (b) (7)(C) food was prepared and went back to see if the call(s) were from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) for about 5 minutes, returned to (b) (6), (b) (7)(C) work station. At that time (b) (6), (b) (7)(C) said food was not ready because (b) (6), (b) (7)(C) was on (b) (6), (b) (7)(C) phone. (b) (6), (b) (7)(C) responded that the only thing not ready was nuggets which another worker was responsible for. (b) (6), (b) (7)(C) and other employees had taken personal calls before and it was never a problem. (b) (6), (b) (7)(C) had never been warned not to do that, and has regularly seen other employees making and taking calls in the same crew room and never being disciplined for it. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) why (b) (6), (b) (7)(C) was on the phone, (b) (6), (b) (7)(C) replied that it was because (b) (6), (b) (7)(C) was calling about (b) (6), (b) (7)(C). They went back and forth and (b) (6), (b) (7)(C) stated "If you have an attitude then you can clock out". (b) (6), (b) (7)(C) did so. After a little while, (b) (6), (b) (7)(C) next scheduled day was (b) (6), (b) (7)(C) and when (b) (6), (b) (7)(C) checked in (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) was not to come back to work until (b) (6), (b) (7)(C) talked to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2016. The (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) was being discharged and also stated, "(b) (6), (b) (7)(C), you know we have a history here". (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) had worked with the franchise for a long time and said there were no problems until arriving at this location. The (b) (6), (b) (7)(C) responded "Yea you're right". (b) (6), (b) (7)(C)

Ironically, soon after arriving at this location is when (b) (6), (b) (7)(C) did the CNN interview and was becoming more active and visible in the union campaign. That is when matters escalated, eventually leading to (b) (6), (b) (7)(C) termination.

ARGUMENT

The Employer violated Section 8(a)(1) and (3) when it terminated (b) (6), (b) (7)(C). The evidence establishes a prima facie case under *Wright Line*, and the Employer fails to meet its burden of establishing it would have discharged (b) (6), (b) (7)(C) had it not been for union activity.

I. The Record Establishes a Prima Facie Case under *Wright Line*.

The General Counsel establishes a *prima facie* Section 8(a)(3) case under *Wright Line* by demonstrating that an employee engaged in protected activity, the employer knew of the protected activity, and the employer took adverse action against the employee based on the protected activity. *Id.*, 251 NLRB 1083 (1980). Here, the Employer had knowledge of (b) (6), (b) (7)(C) union activities. Aside from regularly talking with employees at many McDonald's locations (b) (6), (b) (7)(C) appeared on CNN and two (b) (6), (b) (7)(C) commented on it. (b) (6), (b) (7)(C) participated in at least two strikes and (b) (6), (b) (7)(C) name appears on the strike notices served on the store.⁴

It is counsel's understanding that Region 4 concluded that there was no anti-union animus. That is flatly contradicted by the record in this particular case and also the record by in an already issued Complaint described on page 2, at three case numbers listing at least nine violations of the Act which in fact show anti-union animus. Without repeating the detail contained on page 2 the conduct alleged in the pending complaint includes at least nine violations including but not limited to an illegal discharge, illegal interrogation, and threats.

II. The Employer Fails to meet its Burden of Demonstrating that (b) (6), (b) (7)(C) would have been Discharged had he not been Engaged in Union Activity.

The Employer fails to meet its burden of showing that (b) (6), (b) (7)(C) would have been discharged had (b) (6), (b) (7)(C) not been engaged in union activity. Under *Wright Line*, after a prima facie showing that protected conduct was a motivating factor in the employer's decision, the burden shifts onto the employer to provide an affirmative defense that it would have made the decision "regardless of the employee's protected activity." 251 NLRB 1083, *enfd.* on other grounds, 662 F.2d 899 (1st Cir.1981), *cert denied* 455 US 989 (1982), approved in *NLRB v. Transp. Mgmt. Corp.*, 462 U.S. 393 (1983); *Earle Indus. v. NLRB*, 75 F.3d 400, 404 (8th Cir. 1996); *Manno Electric*, 321 NLRB 278, 281 (1996). As direct proof of motive is rarely possible, the General Counsel may use circumstantial evidence to show that the employer's stated reason is pretext for union animus. See *Merchants Truck Line, Inc. v. NLRB*, 577 F.2d 1011, 1014 (5th Cir. 1978), *Relco Locomotives, Inc.*, 358 NLRB No. 32 (2012), *enfd.* *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 769 (8th Cir. 2013).

⁴ These were provided to the Board.

Discriminatory motive may “reasonably be inferred” from a “variety of factors.” *W.F. Bolin Co. v. NLRB*, 70 F.3d 863, 871 (6th Cir. 1995) (holding relevant factors to the pretext analysis include disparate treatment of employees compared to other employees with similar work records or offenses; a company's deviation from past practices in implementing the discharge; proximity in time between the employee's union activities and their discharge; and a worker's leadership role in the union). Here, the Board can infer discriminatory motive and pretext from the Employer's discriminatory enforcement of workplace rules, the Employer's reliance on implausible and contrived rationales for termination., and temporal proximity between constant union activity and the termination.

A. The Employer's allegation that (b) (6), (b) (7)(C) Should be Fired Is an Inconsistent and Discriminatory Application of Workplace Rules.

The employer's principal stated rationale for terminating (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C)'s use of the phone and interaction with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C)'s last day of work. The Board may find pretext when work rules are inconsistently enforced. See *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1124 (2002) (finding pretext where an employee, prominent in organizing, was fired for infractions commonly committed without incident in the past). The daily practice of both management and employees in cell phone use strongly suggests that the Employer's application of any work rule is inconsistent and its stated rationale is pretextual. This is particularly so when it appears the work rule being enforced, **if it exists at all**, is not contained in any handbook or printed materials distributed at the location, and when (b) (6), (b) (7)(C) was never informed of any said work rule, nor warned about any alleged improper cell phone use.

B. The Employer's Proffered Reasons for (b) (6), (b) (7)(C) Discharge-Are Plainly Implausible and not Factually Supported.

The Employer's rationale is contrived and plainly not based in fact. See *Montgomery Ward & Co.*, 316 NLRB 1248, 1253 (1995) (holding that the Board may find pretext when discipline is “so baseless, unreasonable, or contrived as to raise a presumption of wrongful motive”).

C. (b) (6), (b) (7)(C) Leadership Role in the Fast Food Worker Union Movement and the Temporal Proximity Between (b) (6), (b) (7)(C) Discharge and Activities also Strongly Suggest Pretext.

(b) (6), (b) (7)(C)'s leadership role in the campaign and (b) (6), (b) (7)(C)'s sustained and active role in organizing (b) (6), (b) (7)(C)'s coworkers into the union also suggest that the Employer's stated reasons are pretextual. The Board recognizes that such leadership is a particularly pertinent fact in evaluating claims of pretext. See *Long Island Airport Limousine Service Corp.*, 191 NLRB at 95 (“Particularly

pertinent are the facts that Tritsch was the union spearhead...and essentially pretextual reasons offered as cause for the discharge..."). By discharging such employees, the employer effectively 'nips in the bud' the organizing effort. See NLRB Gen. Couns. Mem. 11-01 (Dec. 20, 2010) ("[D]iscriminatory discharges during organizing campaigns...have a severe impact on employee's Section 7 rights"). (b) (6), (b) (7)(C) was and continues to be an active worker leader in the organizing..⁵ (b) (6), (b) (7)(C) was a "spearhead" in the campaign, frequently talking to co workers about the (b) (6), (b) (7)(C) even appeared on CNN, national news, talking about (b) (6), (b) (7)(C) life as a low wage worker,⁶ and (b) (6), (b) (7)(C) work in the campaign. (b) (6), (b) (7)(C) has participated in a number of strikes; travelled to Chicago and Detroit for the campaign,, spoke with most of (b) (6), (b) (7)(C) coworkers about the union, recruiting many to become members; and has worked with organizers talking with workers. (b) (6), (b) (7)(C) uniquely intensive leadership role in the campaign strongly supports a finding of pretext.

Moreover, the facts show a consistent and continuing pattern of retaliation by the employer immediately after the CNN interview and escalating over a period of time. This is shown by comments made on at least three different occasions. Shortly after the CNN interview (b) (6), (b) (7)(C) is moved from the (b) (6), (b) (7)(C) position back to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) did not smile enough". At the time of and immediately on (b) (6), (b) (7)(C) return to work shortly after the November 10, 2015 strike, (b) (6), (b) (7)(C) is given a stack of write ups, most alleging issues weeks old. When asked why (b) (6), (b) (7)(C) is just getting them (b) (6), (b) (7)(C) was told "the printer had been out of in": (b) (6), (b) (7)(C) was not given copies of those write ups, despite requesting them It culminates in (b) (6), (b) (7)(C) discharge at which time the (b) (6), (b) (7)(C) tells (b) (6), (b) (7)(C) "(b) (6), (b) (7)(C), you know that you have a history here".

Additionally, the timing of (b) (6), (b) (7)(C) discharge suggests the Employer's rationale is pretextual. The Board has long recognized that that the time at which an employee is discharged is an important piece of circumstantial evidence supporting a finding of unlawful motive on behalf of the employer. See, e.g., *State Plaza, Inc.*, 347 NLRB 755 (2006) ("Thus, the timing of a discharge may support an inference of discriminatory motivation..."); *La Gloria Oil & Gas Co.*, 337 NLRB at 1124 (time of discharge can be evidence of unlawful motive); *Montgomery Ward & Co.*, 316 NLRB at 1253 (Board may infer union animus from timing of the alleged discriminatory actions).

Here, the campaign had built strong momentum and media attention in recent months, including (b) (6), (b) (7)(C) interview on CNN. This timeline suggests that animus and not violation of work rules motivated (b) (6), (b) (7)(C) termination. See *Allied Medical Transport, Inc.*, 360 NLRB No. 142, fn. 32 (2014) (finding a month between union activity and discharge a sufficiently short period of time to infer animus).

⁶ These materials were provided to the Board.

CONCLUSION

For at least a year after (b) (6), (b) (7)(C) began working for the franchise (b) (6), (b) (7)(C) had no disciplinary issues, particularly at the other location(s). However, once the CNN interview, with the national publicity it entails happened, the employer began to start to build a record to justify a discharge at some point in time. First (b) (6), (b) (7)(C) was moved from the (b) (6), (b) (7)(C) to the (b) (6), (b) (7)(C) because “(b) (6), (b) (7)(C) did not smile enough”. Second, (b) (6), (b) (7)(C) was handed a stack of old never previously seen write ups November 2015, “because the printer had not been working for a while”. Third, when being fired (b) (6), (b) (7)(C) was told “(b) (6), (b) (7)(C) had a history there.”

In conclusion, the facts here demonstrate that the Employer has violated Sections 8(a)(1) and (3) of the Act by targeting an open and visible leader in the union campaign, who had generated national exposure of the company through (b) (6), (b) (7)(C) CNN interview. This case should be remanded to Region 4 for the issuance of a Complaint or for further investigation. I would be happy to meet and discuss any issues involved in this case.

Respectfully submitted,

/s/Michael J. Healey

Michael J. Healey

Attorney for Charging Parties

From: [Nesby, Sade N.](#)
To: [Murray, Lorraine Y.](#)
Cc: [Tendrich, Robert](#)
Subject: (Jo-Dan MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA, as a joint or single employer). Case No. 04-CA-171737
Date: Monday, June 20, 2016 9:20:00 AM

Lorraine,

We have an appeal pending in the above captioned case which was received on May 17, 2016. The region uploaded a Comment on Appeal into NxGen on June 07, 2016. However the Comment on Appeal has not been finalized and its status is listed as (Side, Edit). If the case is ready for processing by the Office of Appeals, please change the NxGen status on the Comment on Appeal to (Final Version) and send an email to Managing Attorney Robert Tendrich that the case is ready for processing. Thank you for your assistance in this matter.

Case Name: Jo-DAn MadAlisse LTD, LLC d/b/a McDonald's and McDonald's USA, as a joint or single employer
Case No.: 04-CA-171737
Agent: FA Reese

CASEHANDLING LOG

[illegible]



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 13, 2016

MICHAEL J. HEALEY, ESQ.
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Re: Jo-Dan MadAlisse LTD, LLC d/b/a
McDonald's and McDonald's USA, as a
joint or single employer
Case 04-CA-171737

Dear Mr. Healey:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied. The instant charge alleges that the Employer unlawfully terminated (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) engaged in protected concerted activity, however, a review of the documentary and testimonial evidence does not support finding that the Employer acted unlawfully.

The investigation disclosed that (b) (6), (b) (7)(C) openly engaged in activity on behalf of Pennsylvania Workers Organizing Committee. And while there is also allegedly anti-union animus held by this Employer, the Employer provided sufficient evidence to establish that it had a legitimate non-discriminatory reason for its actions and would have taken the same action against the alleged discriminatee, despite (b) (6), (b) (7)(C) protected concerted activity. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The evidence established that (b) (6), (b) (7)(C) had an extensive disciplinary history with the Employer, including two suspensions, in (b) (6), (b) (7)(C) 2015 and (b) (6), (b) (7)(C) 2016. And as to the incident that lead to (b) (6), (b) (7)(C) discharge, the probative evidence disclosed that on or about (b) (6), (b) (7)(C), 2016, while on the clock (b) (6), (b) (7)(C) left (b) (6), (b) (7)(C) work area without permission from (b) (6), (b) (7)(C) supervisor, and when (b) (6), (b) (7)(C) was repeatedly instructed to clock out (b) (6), (b) (7)(C) allegedly refused to do so. Under these circumstances, the Employer has met its burden under *Wright Line, Inc.*, 251 NLRB 1083 (1980), to establish it would have terminated (b) (6), (b) (7)(C) despite (b) (6), (b) (7)(C) protected activity.

As to your contentions on appeal that the Employer's reasons for its actions were pretextual based on (b) (6), (b) (7)(C) leadership position in the Committee's campaign, and the weight of the evidence does not support this position considering (b) (6), (b) (7)(C) employment record as well as the (b) (6), (b) (7)(C) 2016 incident. As to your argument that the Employer, in this case, inconsistently enforced its rules, the investigation did not disclose sufficient basis to support that (b) (6), (b) (7)(C) was treated

differently than others who engaged in the same conduct. Accordingly, there is insufficient basis to warrant the issuance of a complaint against the Employer in this matter.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By:

Mark E. Arbesfeld, Deputy Director
Office of Appeals

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